

In forma pauperis
Petition not printed

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CHARLES ELMORE DROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

J. L. OAKLEY,

Petitioner,

Vs.

MISSISSIPPI & SKUNA VALLEY
RAILROAD COMPANY,

Respondent.

1102
No.

R. MILLER,

Petitioner,

Vs.

MISSISSIPPI & SKUNA VALLEY
RAILROAD COMPANY,

Respondent.

1101
No.

RESPONDENT'S OPPOSITION TO PETITIONS FOR WRITS OF HABEAS CORPUS

W. I. STONE,
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Signature Book of the United States

OF THE HOUSE OF REPRESENTATIVES

1874

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**RESPONDENT'S OPPOSITION TO PETITIONS
FOR WRITS OF CERTIORARI**

MAY IT PLEASE THE COURT:

We respectfully submit that the petitions should be denied:

1. They do not conform to Rule 38 that a certiorari petition disclose "the basis upon which it is contended that this court has jurisdiction to review the judgment or decree in question (See Rule 12, Par. 1)." Said Rule

12, Paragraph 1 requires that "the statement shall refer distinctly to the statutory provision believed to sustain the jurisdiction."

The petitions herein contain no statement of the statutory provision believed to sustain the jurisdiction.

2. The petitioners ask that they be allowed to proceed as paupers. They should not be allowed to do so as each filed an appeal bond for \$250.00 at the time of perfecting the appeals from the District Court to the Circuit Court of Appeals. The appeal bonds were executed in each instance by the American Surety Company of New York as surety and will be found near the end of the record. We are unable to cite the record page as we were not served with a copy of the record.

It is difficult to understand the petitioners' sworn request that they be permitted to proceed as paupers in the face of the appeal bonds with corporate surety. It is provided in 28 USCA Par. 832 that a litigant may, "upon order of the court," proceed in forma pauperis if "because of his poverty he is unable to pay the costs * * * or to give security for the same" etc. The petitioners do not qualify because the record refutes their oaths. They have given security and are not within the purview of the statute.

The petitioners did not print for the Circuit Court of Appeals either the record or their brief. They proceeded as paupers in that court without applying to that court for authority to do so and without order from that court permitting them to do so. Respondent assumed that the petitioners had secured an order

from the Circuit Court of Appeals permitting them to proceed as paupers, but after all briefs were filed respondent learned that such was not the case. The result is that there is no authority to petitioners from the appellate court to proceed as paupers and they should not be allowed to do so as they filed an appeal bond with good surety.

3. Respondent's counsel, as shown by the notice of the certiorari petitions, have been served with copy of the certiorari petitions and supporting brief, but no copy of the record. Respondent obviously is therefore unable to prepare a suitable response and is compelled to rely upon the opinion of the Circuit Court of Appeals and respondent's brief in that court.

Respectfully submitted,

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